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January 27, 2015

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Response of American Crossroads in MUR 6908

Dear Mr. Jordan,

This response to the Complaint designated Matter Under Review 6908 is submitted on behalf of American Crossroads by the undersigned counsel. American Democracy Legal Fund filed the Complaint in this matter on or about November 25, 2014.

I. The Complaint's Allegations

According to the Complaint, "in the months leading up to the November 2014 election, and perhaps going back even further than that, the NRCC appears to have been illegally coordinating with outside groups such as AAN and American Crossroads through the repeated exchange of encrypted internal political polling information posted on hidden Twitter webpages." Complaint at 1. The Complaint is based on a CNN report published on November 17, 2014,¹ and a follow-up report published the next day.² CNN's reports are based on an anonymous source who supposedly told the reporter that two Twitter "handles" (accounts) were used "to share internal polling data" and that "[a]t least two outside groups and a Republican campaign committee had access to the information posted to the accounts, according to the source. They include American Crossroads, the super PAC founded by Karl Rove; American Action Network, a nonprofit advocacy group, and the National Republican Congressional Committee, which

¹ See Chris Moody, *How the GOP used Twitter to stretch election laws*, CNN (Nov. 17, 2014), <http://www.cnn.com/2014/11/17/politics/twitter-republicans-outside-groups/>.

² See Chris Moody, *See the GOP's coded tweets*, CNN (Nov. 18, 2014), <http://www.cnn.com/2014/11/18/politics/gop-tweets-screenshots/>.

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is the campaign arm for the House GOP.”³ Under the Complainant’s theory, “[t]his ongoing exchange of non-public strategically material information constitutes ‘coordination’ under the Act and means that purported ‘independent expenditures’ sponsored by AAN and American Crossroads were in fact, excessive, illegal, in-kind contributions to the NRCC.” Complaint at 1-2.

II. American Crossroads’ Decision Makers Did Not View Either Twitter Account

The Complaint’s allegations that the NRCC “illegally coordinat[ed] ... with American Crossroads through the repeated exchange of encrypted internal political polling information hosted on hidden Twitter webpages” are incorrect. Complaint at 1. American Crossroads’ President and Chief Executive Officer, Steven Law, and Political Director, Carl Forti, are ultimately responsible for the final strategic decisions regarding all of American Crossroads’ independent expenditures. Mr. Law and Mr. Forti solicit input and recommendations from staff and consultants, but final decisions regarding the elections in which to engage, the subject matter of all communications, and the timing and placement of all advertisements are made by Mr. Law and Mr. Forti. The strategic decisions regarding American Crossroads’ independent expenditures were not informed in any way by the information conveyed by the two Twitter accounts at issue in this Complaint.

Mr. Law does not use Twitter in his professional and personal life. He has an inactive Twitter account, but does not post messages to Twitter. Mr. Law does not read or review the Twitter postings of others, except where a Twitter post is included or quoted in the body of a news article. Mr. Law did not view any messages posted by @BrunoGianelli44 and @TruthTrain14 until after the Complaint was filed in this matter. See Affidavit of Steven J. Law at ¶ 3.

Mr. Forti does not use Twitter, he does not have a Twitter account, and he does not post messages to Twitter. Mr. Forti did not read or review any messages posted by @BrunoGianelli44 and @TruthTrain14 until after the Complaint was filed in this matter. See Affidavit of Carl Forti at ¶ 3.

Neither Mr. Law nor Mr. Forti discussed, or otherwise communicated about, the Twitter accounts at issue (@BrunoGianelli44 and @TruthTrain14) with representatives of the National Republican Congressional Committee or American Action Network, as alleged in the Complaint at page 6. See Affidavit of Steven J. Law at ¶ 4; Affidavit of Carl Forti at ¶ 4.

³ Chris Moody, *How the GOP used Twitter to stretch election laws*, CNN (Nov. 17, 2014), <http://www.cnn.com/2014/11/17/politics/twitter-republicans-outside-groups/>.

III. American Crossroads' 2014 U.S. House Independent Expenditures

For the purpose of providing the Commission with all relevant background information, we note that American Crossroads made independent expenditures in connection with three U.S. House elections in 2014: (1) the special election held on March 11, 2014, in FL-13; (2) the general election in IL-13; and (3) the general election in IL-17. (Although not named as a respondent, Crossroads GPS made independent expenditures in connection with the U.S. House general election in NV-04.) In 2014, the vast majority of American Crossroads' (and Crossroads GPS's) independent expenditures were made in connection with U.S. Senate elections, not U.S. House elections. Based on our review of the CNN reports, neither of the two Twitter accounts at issue posted any messages about U.S. Senate elections. Accordingly, the total spending figure cited in the Complaint (\$21.6 million) is entirely irrelevant.

Based on our review of the Twitter messages published by CNN,⁴ it appears that the only election in which there was any overlap in American Crossroads independent spending and the Twitter messages was the U.S. House election in IL-13.⁵ Of the materials published by CNN, neither Twitter account posted any messages regarding the other U.S. House elections in which American Crossroads made independent expenditures.

American Crossroads' independent expenditures in connection with the IL-13 U.S. House election in 2014 were exclusively for mail communications. In this instance, American Crossroads' mail consultant/vendor reviewed the results of independent, privately-commissioned polling data. Based on that review, the mail consultant/vendor subsequently recommended message content and target "universes" to Mr. Forti and Mr. Law. The privately-commissioned polling data that this mail consultant/vendor reviewed – and upon which his recommendations were based – was entirely different from the poll results evidently "tweeted" by @BrunoGianelli44 and @TruthTrain14. Mr. Law and Mr. Forti then made the final decisions regarding the content and targeting of these mail communications based on the recommendations from the mail consultant/vendor.

As noted above, neither Mr. Law nor Mr. Forti ever saw the Twitter messages at issue, and American Crossroads' mail vendor/consultant made recommendations based on independent polling data. (We have no information as to whether the mail vendor/consultant was aware of @BrunoGianelli44 and @TruthTrain14.) In any event, the messages posted on Twitter by @BrunoGianelli44 and @TruthTrain14 did not provide any material information about the U.S. House election in IL-13, which was regarded as a "battleground" congressional district well before Summer 2014. For

⁴ See Chris Moody, *See the GOP's coded tweets*, CNN (Nov. 18, 2014), <http://www.cnn.com/2014/11/18/politics/gop-tweets-screenshots/>.

⁵ @BrunoGianelli44 posted a message regarding IL-13 on September 19, 2014, and @TruthTrain14 posted a message regarding IL-13 on August 8, 2014.

example, Larry Sabato's website identified IL-13 as a 2014 battleground district on December 13, 2012.⁶

IV. The Complaint Fails to Allege a Violation of the Act

As explained above, American Crossroads' decision makers did not view the Twitter accounts or messages at issue – meaning the conduct prong of the Commission's coordinated communication regulation could not possibly have been satisfied.

We note for the record, however, that information derived from a public Twitter posting is information "obtained from a publicly available source," which is excluded from 11 C.F.R. §§ 109.21(d)(2) (material involvement), 109.21(d)(3) (substantial discussion), 109.21(d)(4) (common vendor), and 109.21(d)(5) (former employee or independent contractor). Additionally, 11 C.F.R. § 109.21(d)(1) (request or suggestion) "is intended to cover requests or suggestions made to a select audience, but not those offered to the public generally," and "a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard in paragraph (d)(1)." Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003). Even if the Complaint's allegations were to be taken as true (they are not), and left unrebutted (we have rebutted the Complaint's allegations), the Complaint still fails to allege a violation of the Act because information communicated via Twitter is either information "obtained from a publicly available source" or information that does not trigger the "request or suggest" conduct standard. Accordingly, there are no circumstances in which the conduct prong of the Commission's coordinated communication regulation could be satisfied in this matter.

⁶ See Kyle Kondick, *House 2014: A Narrowing Battlefield?*, Sabato's Crystal Ball (Dec. 13, 2012), <http://www.centerforpolitics.org/crystalball/articles/house-2014-a-narrowing-battlefield/>; see also Scott Bland, *Fight Begins for Key Battleground House Seat in Illinois*, National Journal (Feb. 25, 2014), <http://www.nationaljournal.com/hotline-on-call/fight-begins-for-key-battleground-house-seat-in-illinois-20140225> ("Both parties have tabbed Illinois's 13th District as a competitive race to watch in the fall."); Rick Pearson, *Illinois a congressional battleground state*, Chicago Tribune (Sept. 26, 2014), <http://www.chicagotribune.com/news/ct-illinois-congress-met-20140926-story.html#page=1> ("[a]nother congressional district that has been viewed as in play is the state's 13th").

V. Conclusion

For the reasons set forth above, this Complaint against American Crossroads should be quickly dismissed.

Sincerely,



Thomas J. Josefiak

Michael Bayes

HOLTZMAN VOGEL JOSEFIK PLLC

Counsel for American Crossroads


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AFFIDAVIT OF STEVEN J. LAW

PERSONALLY came and appeared before me, the undersigned Notary, the within named STEVEN J. LAW, makes this Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Steven J. Law. I am the President and Chief Executive Officer of American Crossroads. I have served in that capacity since 2010. I am familiar with the activities of American Crossroads, including the public communications distributed by American Crossroads.
2. Carl Forti is the political director of American Crossroads. Mr. Forti and I make all strategic decisions regarding the elections in which American Crossroads will engage, the subject matter of all of American Crossroads' communications, and the timing and placement of all American Crossroads' advertisements.
3. I do not use Twitter in my professional or personal life. I have an inactive Twitter account and do not post messages to Twitter. I do not read or review the Twitter postings of others, except where a Twitter post (usually by a journalist or public official) is included in the body of a news story. I did not view any messages posted by @BrunoGianelli44 or @TruthTrain14 until after the Complaint was filed in this matter.
4. I did not discuss, or otherwise communicate about, the Twitter accounts @BrunoGianelli44 or @TruthTrain14 with representatives of the National Republican Congressional Committee or American Action Network.

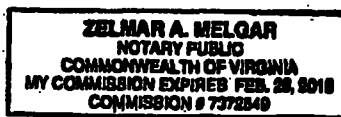
DATED this the 27th day of January, 2015


Signature of Affiant, Steven J. Law

SWORN to subscribed before me, this 27th day of January, 2015


NOTARY PUBLIC

My Commission Expires:
Feb. 28, 2018



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AFFIDAVIT OF CARL FORTI

PERSONALLY came and appeared before me, the undersigned Notary, the within named CARL FORTI, makes this Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Carl Forti. I am an independent contractor who serves as the Political Director of American Crossroads. I have served in that capacity since 2010. I am familiar with the activities of American Crossroads, including the public communications distributed by American Crossroads.
2. Steven J. Law is the President and Chief Executive Officer of American Crossroads. Mr. Law and I make all strategic decisions regarding the elections in which American Crossroads will engage, the subject matter of all of American Crossroads' communications, and the timing and placement of all American Crossroads' advertisements.
3. I do not use Twitter. I do not have a Twitter account and I do not post messages to Twitter. I do not read or review the Twitter postings of others. I did not view the messages posted by @BrunoGianelli44 or @TruthTrain14 until after the Complaint was filed in this matter.
4. I did not discuss, or otherwise communicate about, the Twitter accounts @BrunoGianelli44 or @TruthTrain14 with representatives of the National Republican Congressional Committee or American Action Network.

DATED this the ____ day of January, 2015



Signature of Affiant, Carl Forti

SWORN to subscribed before me, this 27 day of January, 2015


NOTARY PUBLIC

My Commission Expires:

09/30/2015

